

1 UNITED STATES DISTRICT COURT

2 WESTERN DISTRICT OF NEW YORK

3

4 - - - - -
5 BLACK LOVE RESISTS IN THE RUST, by
and through its co-directors Natasha
Soto and Shaketa Redden and on
behalf of its members agent Just
Resisting; Dorethea Franklin; Taniqua
Simmons; De'Jon Hall; and Jane Doe,
individually and on behalf of a class
of others similarly situated,
Plaintiffs

18-CV-719 (CCR)

9 vs.

10 CITY OF BUFFALO, NY; BYRON B. BROWN,
Mayor of the City of Buffalo, in his
11 individual and official capacities;
BYRON C. LOCKWOOD, Commissioner of the
12 Buffalo Police Department, in his
individual capacity; DANIEL DERENDA,
13 former Commissioner of the Buffalo
Police Department, in his individual
capacity; AARON YOUNG, officer of the
Buffalo Police Department, in his
14 individual capacity; KEVIN BRINKWORTH,
PHILIP SERAFINI, officer of the Buffalo
16 Police Department, in his individual
capacity; UNKNOWN SUPERVISORY PERSONNEL
17 1-10, officers of the Buffalo Police
Department, in their individual capacities;
18 and UNKNOWN OFFICERS 1-20, officers of the
Buffalo Police Department, in their
19 individual capacities,
Defendants.

Buffalo, New York
May 30, 2019
3:30 p.m.

20 - - - - - X

21

22 TRANSCRIPT OF TELEPHONE CONFERENCE
BEFORE THE HONORABLE CHRISTINA CLAIR REISS
23 UNITED STATES DISTRICT JUDGE

24

25

A P P E A R A N C E S

CENTER FOR CONSTITUTIONAL RIGHTS
BY: CLAUDIA WILNER, ESQ.
DARIUS CHARNEY, ESQ.
ANJANA MALHOTRA, ESQ.
666 Broadway, Floor 7
New York, New York 10012
Appearing on behalf of the Plaintiffs

CITY OF BUFFALO DEPARTMENT OF LAW
BY: ROBERT M. QUINN, ESQ.
65 Niagara Square
Buffalo, New York 14202
Appearing on behalf of the Defendants

AUDIO RECORDER: Jane Kellogg

TRANSCRIBER: Christi A. Macri, FAPR-RMR-CRR
Kenneth B. Keating Federal Building
100 State Street, Room 2120
Rochester, New York 14614

(Proceedings recorded by electronic sound recording, transcript produced by computer).

PROCEEDINGS

* * *

7 Counsel, please state your name and the party you
8 represent for the record, and we'll start with the plaintiffs.

9 **MS. WILNER:** This is Claudia Wilner from the
10 National Center for Law and Economic Justice for the
11 plaintiffs.

14 **MS. MALHOTRA:** And this is Anjana Malhotra also
15 cooperating counsel from the Center for Constitutional Rights
16 for the plaintiffs.

17 **MR. QUINN:** And this is Robert Quinn on behalf of
18 the defendants.

19 **THE COURT:** Good afternoon. It would be helpful --
20 this is Judge Reiss -- if each time you speak you announce who
21 you are. The phone is not my favorite way of doing things --
22 it's my least favorite way, but it's the easiest way to get
23 people together quickly.

24 As you know, the plaintiffs have filed a document
25 24, which is a letter summarizing outstanding discovery

1 disputes. To the extent that the plaintiffs wanted it to be
2 treated as a motion to compel, we directed them to file it as
3 a motion. It's quite extensive, so it's a little bit beyond
4 what I was contemplating when I said that if you ran into
5 trouble you could send me competing letters.

6 We haven't been able to -- because it was just
7 filed on the 29th, the defendant hasn't had an opportunity to
8 respond. So there's only going to be so much we can
9 accomplish in this status conference, but I do want to have a
10 path going forward because these issues were raised at our
11 last status conference.

12 You thought you could work them out, and it looks
13 to me like we have numerous outstanding discovery issues
14 pertaining primarily to ESI and no path forward. Now, I've
15 only seen one side of the dispute, so I might be wrong about
16 all of that.

17 So I'm going to start with the defendant.

18 **MR. QUINN:** Yes, Your Honor. We have had
19 multiple --

20 **THE COURT:** So remember announce yourself if you
21 would?

22 **MR. QUINN:** I apologize, this is Robert Quinn on
23 behalf of the defendants and I'm the only one on behalf of
24 defendants, but I will try to announce myself.

25 So following the last conference we have had

1 multiple meet-and-confers, we had multiple discussions.
2 The -- what I view as the biggest problem that we're sort of
3 trying to get through and work through is just the sheer scope
4 and size of the requests, particularly on the ESI.

5 And I think when we're talking about ESI now we're
6 largely talking about e-mails. It does extend a little bit
7 beyond that, but just so the Court knows, there have been
8 multiple subpoenas issued to various entities who have
9 produced ESI-type information; large, large responses of
10 information regarding any number of these requests.

11 But what we're talking about now I think is largely
12 related to e-mails and the problem that the defendants have
13 encountered is just the size of it. So we did recently talk
14 about, you know, how many custodians they were looking for,
15 the terms that were going to be used for searches; and it's
16 136 custodians that have been identified and 85 numbered
17 requests, which include multiple different search terms that
18 they want to search.

19 And we just after, you know, extensive review and
20 looking into it, we just didn't have the capacity to do that.
21 So I have reached out to see if we could have some, you know,
22 other entity help us with this.

23 We haven't accomplished it yet and we are still
24 trying to work through these things, but that is really the
25 biggest issue on the ESI that we've encountered. Once you get

1 sort of past that you do have to dial down into what
2 information they're entitled to, whether or not they are
3 entitled to search 136 custodians' e-mail accounts and whether
4 or not they've made that showing. Those are things we would
5 have to address, whether or not they need to search 85
6 numbered terms and those specific terms that are in there.

7 But that's the big issue on ESI that the defendants
8 have encountered and that is the reason for any delay at this
9 point.

10 I have conveyed all of this to plaintiffs' counsel
11 and we have tried to work through it, but that is sort of the
12 hang up from our perspective on that.

13 **THE COURT:** All right. Let's hear from the
14 plaintiffs and please announce yourself.

15 **MS. WILNER:** Yes, this is Claudia Wilner for the
16 plaintiffs. And I do think it's true that they have had some
17 technological limitations on their side.

18 However, we have attempted to confer on ESI with
19 them starting from when we first served our first requests and
20 have really just been met with a lot of delay and we'll get to
21 it, we'll get to it and it wasn't until only last -- in April
22 that the defendants even articulated that they were going to
23 have difficulty searching for e-mails.

24 And it -- and the search terms is another example.
25 We've provided a list of proposed custodians and search terms

1 to the defendants on May 9th, which was -- looks like getting
2 on three weeks ago. We asked defendants to confer on those
3 terms. They have not done so.

4 We would talk to them -- be willing to talk to them
5 about, you know, custodians and terms, but they have not been
6 willing to engage in that conversation. We've asked to speak
7 to their vendor about search capabilities and, honestly, 138
8 custodians, if you're working with modern, you know, material
9 is not hard for them to search through, you know, that amount.
10 I don't think it's an usually large number.

11 So -- so that's where we are, we're about six
12 months into discovery. We haven't received a single e-mail or
13 any kind of internal communication, no press release, no draft
14 documents, no internal memos, nothing that would show the
15 policies, the practices of the Buffalo Police Department's
16 policing programs.

17 **THE COURT:** All right. So I've had this come up in
18 other cases and one of the things that I have found successful
19 in getting the ball rolling, so I would usually direct one
20 side, the plaintiffs, to pick 20 custodians and 20 search
21 terms most important to you, and then I would require the
22 defendant, because it's such a narrowed inquiry, to get right
23 to it. So a response coming out in a much shorter time than
24 you would otherwise be allotted.

25 And then we kind of do a rolling production because

1 it -- you can't really, as you well know, test the breadth of
2 the search term until you've actually put it into a request
3 and see how many documents you get back.

4 And my guess is there might be 136 custodians, but
5 there are certain custodians that are more important than
6 others and there are certain search terms that are more
7 important than others and as opposed to taking it on a
8 document-by-document request in terms of you've asked for this
9 and we're gonna use it that way, even if we can get a rolling
10 production under way.

11 Is there any reason why that approach would not
12 work in this case? And let me start with the plaintiffs.

13 **MS. WILNER:** That approach sounds great to us, Your
14 Honor.

15 **THE COURT:** Okay. And any reason why that won't
16 work from defense counsel's perspective?

17 **MR. QUINN:** Not that I can see, Your Honor. We have
18 explored any number of technological, you know, hang ups and I
19 think we've worked through most of them at this point. So I
20 don't see any issues.

21 **THE COURT:** Okay. So the way it's going to work is
22 the plaintiffs are going to pick 20 custodians, 20 terms and
23 the defendants are going to have two weeks to make a
24 production that's responsive to that. If you are getting, you
25 know, 50,000 hits that's obviously not going to be a good

1 search term, but I want to see some good faith, you know,
2 you're going to be able to see what's working and what's not
3 working and that will help us narrow the scope of the ESI for
4 less important custodians.

5 And then we're going to come back in 90 days and
6 see how that's going. If things have gone off the rails
7 between now and then, we'll have another status conference,
8 but we're going to see if we can get this under way.

9 Any reason why that approach will not work?

10 **MR. QUINN:** Robert Quinn. No issues from our end,
11 Your Honor.

12 **THE COURT:** How about from the plaintiffs?

13 **MS. WILNER:** I think that will work for us, Your
14 Honor.

15 **THE COURT:** Okay. So 20 search terms, 20
16 custodians, two weeks for defendants' response. We're going
17 to come back in 90 days for a status conference to see how
18 this is working. And I'm not going to --

19 **UNIDENTIFIED SPEAKER:** (Indiscernible).

20 **THE COURT:** -- I'm now hearing an echo, but I'm not
21 going to treat your May 28th, 2019 submission as a motion to
22 compel at this time.

23 So I would rather the defendants get on the
24 bandwagon of producing documents. It doesn't mean that it
25 cannot be converted to a motion to compel thereafter, but I

1 would have to wait for a response and everything.

2 Does that work as well for the plaintiffs?

3 **MS. WILNER:** It does, although there were a few
4 issues -- and we didn't file this necessarily intending it to
5 be a motion to compel, but there were a few issues that we
6 raised in the letter that are issues that we've discussed many
7 times in the meet-and-confers with defendants where some
8 guidance from the Court might be helpful at the outset.

9 **THE COURT:** Like the issue of citizens complaints?

10 **MS. WILNER:** Yes.

11 **MR. CHARNEY:** Yes.

12 **THE COURT:** Yeah, I don't see how that would not be
13 within the scope of discovery. You're going to have to tell
14 me why, especially in the nature of this action, the
15 defendants would say consumer complaints or citizens
16 complaints are not going to be within the scope of production.

17 **MR. QUINN:** We have not, Your Honor. This is Robert
18 Quinn on behalf of the City.

19 The problem as with the ESI with the citizen
20 complaints, and we have discussed this at length, is just the
21 search capacity to do that. So as identified in the
22 plaintiffs' letter there's sort of two avenues in which these
23 complaints generally can be received and the ones identified
24 are through Internal Affairs or through the 311 complaint
25 system.

1 Now, I have undertaken extensive, you know,
2 investigation into these things and the problem that I've run
3 into is just there is no box or, you know, specific place
4 where a complaint about this type of issue would go. So there
5 would be some type of search necessary.

6 Regarding the Internal Affairs complaints, we've
7 looked into the Internal Affairs complaints for the time
8 period at issue and there are approximately 6,000 of them.

9 Within that 6,000, approximately 6,000
10 Internal Affairs files, there's any number of things which
11 have nothing to do with this issue. There's lots of car
12 accidents, there's internal things, various things that have
13 nothing to do with this.

14 There's a program which we've identified in our
15 discovery responses and we've talked at length with
16 plaintiffs' counsel called IAPro. IAPro, which you can search
17 by key word term, but as I indicated to plaintiffs' counsel in
18 an e-mail of -- I think it was March 31st, searching through
19 there is difficult because if you search something like
20 traffic, you get any number of responses which don't have
21 anything to do with actual traffic ; they can refer to drug
22 traffic or things like that.

23 So we were having difficulty identifying the
24 specific complaints related to the allegations in the
25 plaintiffs' complaint. There's sort of a separate subsection

1 in that they're looking for complaints related to broadly
2 speaking constitutional violations, which is kind of difficult
3 to interpret.

4 So what I proposed to the plaintiffs is to try to
5 sort of narrow it down through the use of the IAPro system and
6 then we could go through the actual files to see if they were
7 responsive.

8 Where we sort of got hung up and we do have
9 potentially a 50(a) issue somewhere in the future, that's not
10 the particular argument that we're raising, where we got hung
11 up is how we go about doing that, how we go about specifically
12 identifying the potentially responsive complaints in the
13 Internal Affairs Department.

14 And, you know, I think we can work through this and
15 I hope that we would be able to work through this. We have
16 not been able to do that yet.

17 With regards to the -- and maybe if you want to
18 address that first because there is sort of the separate 311
19 issue, which is a little bit different.

20 **THE COURT:** All right. So why would not the same
21 approach of the plaintiffs pick their ten best terms, I think
22 of some while I'm sitting here, and they apply those ten best
23 terms to your system? If they're not pulling up things, that's
24 on them because they haven't picked the best terms.

25 If traffic is one of their terms and it produces

1 6,000 responses, that's not going to help anybody. So why
2 can't we run the same kind of system with this system?

3 **MR. CHARNEY:** Your Honor, this is Darius Charney for
4 the plaintiffs.

5 I think that makes sense. I guess just so that
6 we're clear, because I want to understand the process, if Mr.
7 Quinn does the search and let's say, I don't know, 700 or 800
8 complaints come back, I guess what we want to make sure is
9 that we're going to get the complaints that are actually
10 responsive.

11 And so I -- I was trying to figure out would the
12 process then involve at some point an actual review of the
13 complaints themselves to differentiate between those that are
14 not responsive and those that are?

15 Because we need -- Mr. Quinn is correct, we had
16 these discussions and we discussed a process similar to what
17 you're articulating now, but Mr. Quinn also expressed to us
18 that he didn't want to be put in a position of having to go
19 through the complaints by hand, but then at the same time he
20 did, you know, to his credit, I think he was honest about the
21 fact that you may have to go through some of these by hand to
22 really figure out what they're -- what they're about, what the
23 subject matter is.

24 And so I -- I want to -- I want to make sure
25 that that -- that that kind of second layer of review is going

1 to happen so that we are getting the -- those complaints that
2 are responsive to our request.

3 And, you know, we don't want to have to come back
4 three weeks again and say, well, you know, we're still kind of
5 fighting over what number is too big and what number is
6 reasonable to have to go through and so --

7 **THE COURT:** All right. So I'll throw you a
8 ballpark, say you -- your search term is civil rights and it
9 pulls up 200 complaints. I would expect 200 complaints to be
10 reviewed.

11 I would not expect 500, I would not expect 2,000.
12 Then we're going to have to narrow it down and I'm sure you've
13 been to ESI seminars as I have, it's going to be imperfect.
14 It's just the way it is.

15 And the goal is to come at it enough different ways
16 that you're going to get, you know, 200 for civil rights, but
17 if you type in a particular officer's name and you get five,
18 you're going to be -- between the two of those search methods
19 you're going to hit on something.

20 So I will have proportionality in mind and I do not
21 expect Mr. Quinn or his client to be reviewing 2,000
22 documents.

23 **MR. CHARNEY:** Got it.

24 **THE COURT:** With regard to the redactions, I'm
25 happy -- there's a privilege log requirement under the Federal

1 Rules of Civil Procedure. I'm happy to do your *in camera*
2 inspection as long as you're reasonable with what you're
3 asking me to do, but I will be -- you know, that's the best
4 way to handle it.

5 If there's a claim of privilege and you have to
6 have a privilege log and enough in the privilege log for the
7 person asserting the privilege to explain kind of baseline why
8 it might apply so the other person can challenge it, I'm happy
9 to do -- I shouldn't say "happy," that's an overstatement -- I
10 will do an *in camera* inspection and have done it many times.
11 I've got it in an anti-trust case right now.

12 So that will resolve the redaction problem and
13 there's an incentive for Mr. Quinn not to overredact because I
14 will be looking for a privilege log which takes a lot of work.

15 Let's talk about the 311 -- is that what it's
16 called -- system?

17 **MR. QUINN:** Robert Quinn on behalf of the
18 defendants. It's the 311 mayor's complaint line I think is
19 the formal title, but 311 is the phone number that is called.

20 So what I think the primary issue in this sort of
21 discovery issue is, is prior to this lawsuit there was a FOIA
22 request made by National Center for Law and Economic Justice
23 and they asked all 311 complaints pertaining to police -- I
24 don't know exactly what their request was, but generally
25 relating to police issues.

1 And what was produced was a document that was
2 created by the 311 system which contained 6,051 entries. Now,
3 these entries were all taken from a queue, a particular type
4 of entry that just generally relates to -- I'm sorry, I was
5 looking at the wrong -- I was looking at the wrong number.

6 The actual number of 311 responses was 14,763. And
7 they relate, generally speaking, to the Buffalo Police
8 Department. Within that are various types of issues: Quality
9 of life issues, requests for police services, you know,
10 compliments, all kinds of things that could be contained
11 within this document that was prepared, created and produced
12 in response to this FOIA request.

13 There were -- there is information in the 311
14 system that was not produced, things like a person's -- the
15 complainant's -- the person making the call -- personal
16 information, phone numbers, things like that.

17 And there's also a complaint data field. Now, the
18 complaint data field is, generally speaking, searchable as it
19 exists in the system, but what was produced and created as
20 part of this FOIA response contains everything, all the
21 complaints, not just related to specific issues.

22 And we would run into sort of that same -- the same
23 problem of having to do the search to find ones that are
24 responsive and then you would have to deal with the personal
25 information that might be contained within those responses.

1 Now, I don't want to speak for plaintiffs' counsel,
2 but they've taken the position that this -- this -- this --
3 this document is a document that has to be produced in its
4 entirety, where I would say that it was something that was
5 created in response to a FOIA response and, therefore, it is
6 not really a document; it's just a collection of information
7 that was taken and all of this stuff is not -- most of it is
8 not in any way responsive to the plaintiffs' demand or
9 relevant to the issues in this complaint.

10 **THE COURT:** So if the document exists, it's already
11 been produced in response to FOIA, what's -- what's the
12 rational purpose of not producing the document? And then they
13 can go through it and they can hone their -- they have no
14 interest and no benefit in I think the police are doing a
15 great job and the water tastes great complaints, but it's up
16 to them to then go through the document and decide where they
17 want to fix their interest.

18 If you've already produced it in this particular
19 form, I don't see any basis for claiming it's privileged,
20 though, I hear your objection being noted. What's the hold
21 up?

22 **MR. QUINN:** The entire document was not produced.

23 **THE COURT:** Okay.

24 **MR. QUINN:** The only thing that was produced was a
25 portion of it. So the complaint data field was not produced;

1 the personal information of the complainant was not produced.

2 So that information was not produced.

3 I would say -- and plaintiff talks about a -- a --
4 some type of a protective order, something like that. I don't
5 think I can turn over this information, this personal
6 information of people who are not parties to this lawsuit
7 without potentially subjecting myself to some type of, you
8 know, complaints about this.

9 **THE COURT:** Okay. Well, we probably do need a
10 protective order.

11 Let me turn to plaintiffs and ask, you have this
12 document, you have information in it to allow you to narrow
13 your search. So I think in some cases a person's name and the
14 location where the event occurred and the police officer's
15 identification will be important, but not everybody in the
16 database.

17 Why don't you have enough information to sort of
18 narrow your inquiry?

19 **MS. WILNER:** This is Claudia Wilner, Your Honor.
20 And an example of what was produced to us was actually filed
21 as Exhibit 3 and it might be helpful for the Court to take a
22 look at that.

23 So this is a copy of the complaint to 311 that
24 related to police issues. So this is already a great -- a
25 huge narrowing of all the possible complaints that there could

1 be in the 311 database, which would cover everything related
2 to the City of Buffalo. These are just the police related
3 complaints.

4 And as you can see, you can't see any of what
5 they're about because the most detail it gets into is if it's
6 police issue or quality of life issue.

7 And there is another field which was suppressed
8 which is -- contains free form data entry which is the notes
9 of what the complaint was about. And that is the field that
10 we requested be produced.

11 And, you know, and I don't --

12 **THE COURT:** So (talking at the same time) --

13 **MS. WILNER:** (Talking at the same time).

14 **THE COURT:** -- let's stay on just that particular
15 issue. Why can't the nature of the complaint be produced?
16 Because I'm looking at it and I assume some of the
17 intersections mentioned will be ones in which the plaintiffs
18 have some interest, but since your categories are requests for
19 police services, BPD police issues and quality of life issues,
20 there's really not much ability to narrow it.

21 Why aren't you producing the nature of the
22 complaint?

23 **MR. QUINN:** So -- and when you say "the nature of
24 the complaint , " Your Honor, I assume you're referring to the
25 complaint data field? Like that's the free form entry.

1 **THE COURT:** Yes.

2 **MR. QUINN:** So what they do with that is someone
3 calls and they type in what the complaint is. So in that
4 data -- I'm just reading from a few now -- there's one that
5 says hoop at curb. So they're referring to a basketball hoop
6 at curb. Obviously we'd argue that that's not relevant.

7 Some of the other ones are they're selling drugs
8 here. It just says they are selling drugs here. Some of the
9 others are residents downstairs are chaotic. We would say
10 that stuff is not relevant, it's not responsive to any
11 document requests and it shouldn't be produced.

12 Beyond that then and because, you know, the Court
13 might say, well, why don't you just turn it over, what's the
14 harm? Within that -- within these 14,000 entries there are
15 things like John Doe at such and such address is selling drugs
16 or this person did this to me. The concern there would be
17 that this is information that really should not be turned
18 over.

19 I don't know if it's true or if it's not true, if
20 it's problematic in that it's not something that is responsive
21 and it's not something that should be produced that I would
22 say to some other party when it's not relevant to the lawsuit.

23 **THE COURT:** How are you going to -- how are you
24 going to segregate out that? Because I understand, you know,
25 they need to be able to narrow it, you want to protect those

1 people. What can you do to make that happen?

2 **MR. QUINN:** What I propose would be the same thing
3 for the Internal Affairs, whether it be a key word search of
4 some kind proposed, you know, 20 terms; if they are
5 responsive, say all that information within that, then I can
6 provide the complaint data field for that information.

7 I guess then the next step would be whether or not
8 the -- the location of the complainant, whether or not that
9 stuff would be -- would be responsive and discoverable, but I
10 think one way to do it would be to provide search terms, I'll
11 provide those -- the hits for that, and then we can talk about
12 whether or not the personal information of the person making
13 that complaint would be necessary and whether or not certain
14 information within those complaint entries would have to be
15 redacted.

16 **THE COURT:** Okay. That's going to be our plan
17 and -- go ahead.

18 **MS. WILNER:** Yes, I'm sorry, Your Honor, but I don't
19 know that for this particular database that that plan is going
20 to work for us. Part of it is that, you know, the City has
21 made representations that the citizen complaints are part of
22 how it deploys its police resources.

23 And we need to be able to assess the universe of
24 complaints. I don't think that just running a few search
25 terms is going to be, you know, adequate for doing that and I

1 don't think that we should have to rely on defendants'
2 assessment of what may be relevant or not relevant.

3 For example, accusations of selling drugs or
4 chaotic residences may be highly relevant to our claim. And
5 so it would be important for us to see the entire universe of
6 complaints.

7 There is no privilege that attaches to the
8 information in this database. People do not sign anything.
9 The City is not pledging to keep their information
10 confidential when they call 311. And we are happy to have
11 them produced under a protective order so that -- so that it
12 can't be publicly released, but viewing the entire universe of
13 complaints is important to us.

14 **THE COURT:** I understand it's important. I
15 understand it's not privileged. But there is a duty on the
16 Court's part to protect third parties from undue
17 embarrassment, harassment, you know, they are calling the
18 police to report an issue. It doesn't mean that they
19 consented to have that disclosed to you.

20 So we're going to try this approach of -- in the
21 case of the custodians, it's 20 custodians, 20 search terms,
22 this is going to be ten search terms.

23 Let's see what happens. And if it proves to be not
24 helpful and non-responsive, we'll come up with a different
25 approach. So we're going to do this by trial and error and

1 then we're going to see whether the entire universe of
2 complaints should be produced.

3 But I'm not persuaded in looking at the complaint
4 that you have in this particular case that you need every, you
5 know, 14,000 complaints of this nature, especially since you
6 are going to be getting other forms of the same information
7 from other sources.

8 I want to take up -- I have another conference call
9 at 4:00, I want to take up the Attorney General's information
10 next and I'm going to ask why, Mr. Quinn, the Attorney
11 General's information would not be disclosed?

12 **MR. QUINN:** Well, I mean, it asks for all
13 information. I'll start with I don't see how it's relevant
14 the fact that some potential maybe investigation at this
15 point. We don't know much about it, it has not been, you
16 know -- there has not been any testimony about it, there
17 hasn't been any reference to it, any of the documents that
18 have been produced, it, you know, it happened sort of after
19 the basis -- sort of the factual allegations in the complaint,
20 generally speaking, occurred. And then -- so I don't see how
21 it's really relevant.

22 And then what they're looking for is -- is
23 information which I think would potentially be privileged; a
24 lot of potential attorney-client information, a lot of
25 potentially deliberative process-type information, which we're

1 not really relying on it, it would be more so -- be the
2 attorney-client type of information.

3 And I don't know that at this point in the lawsuit
4 there has been any showing that investigation went anywhere,
5 the basis for the -- the supposed investigation or anything
6 like that. So I think at this point in the lawsuit, you know,
7 maybe it does become relevant some time further down the line.

8 I think at this point there really hasn't been that
9 showing that that would be discoverable or necessary material,
10 those types of things. I don't know that that showing has
11 been made.

12 And then there is like the big concern about
13 attorney-client (indiscernible).

14 **THE COURT:** Well, the attorney-client privilege, you
15 know, you -- my guess is there're not that many documents and
16 there's certainly probably very few that are attorney-client
17 privilege that were produced already to the Attorney General.
18 I assume you asserted that privilege already, so that's been
19 covered.

20 What do you think the universe of documents is?
21 How many?

22 **MR. QUINN:** Robert Quinn from the City. I don't
23 think it would be a lot. I can say, you know, because I am
24 familiar with it, there were a few letters I believe that came
25 in and there was a response that was provided to the Attorney

1 General's Office. I think (indiscernible) might have that
2 information already based on representations that they've
3 made. So that information does exist and that was -- was
4 produced.

5 We probably could produce that if -- if it would
6 help move things along, and I don't know that there would be a
7 lot beyond that because I don't know -- like I said, I don't
8 know how relevant this investigation would be.

9 **THE COURT:** I'm not too worried about relevance
10 because that's my job. I don't think we're talking about a
11 lot of documents either, correct?

12 **MR. QUINN:** I think that's correct, Your Honor.

13 **THE COURT:** Okay. So, plaintiffs, I'm going to
14 order that those documents be produced. If there's a
15 privilege, it will be claimed on a privilege log and you
16 should expect to get those documents, some of which maybe
17 duplicative, I'm finding that they're sufficiently relevant
18 that they will be produced.

19 So does everybody know what we're going to do going
20 forward?

21 **MR. CHARNEY:** Yes, Your Honor. This is Darius
22 Charney again for the plaintiffs. Just a couple of clarifying
23 questions.

24 One is under the timing for the IAPRO citizen
25 complaint production. I mean, since we're going to do it I

1 guess on a rolling basis, the same kind of two week timeline
2 that you had set for ESI?

3 **THE COURT:** Yes.

4 **MR. CHARNEY:** Okay.

5 **THE COURT:** Yes. You generate the terms, they have
6 two weeks to turn it around. I do expect you to be reasonable
7 with each other, but really it will be kind of a hit count and
8 I'm going to be reasonable to the defendants. So as I said,
9 you know, I think 200 is about the ballpark of what I would
10 expect anybody to be reviewing.

11 I don't expect them to be reviewing and producing
12 thousands of documents at a time. That means if you're
13 getting a thousand hits, we need to review.

14 **MR. CHARNEY:** Got it.

15 **THE COURT:** Okay?

16 **MR. CHARNEY:** Got it.

17 **THE COURT:** So let's see how this works. Go ahead.

18 **MR. CHARNEY:** Your Honor, just one more similar
19 question on the timing for the redaction issue where you
20 would, I guess, be willing to look at things *in camera*.

21 You -- is there a timeline you have in mind for
22 when Mr. Quinn should provide those documents? Because these
23 are documents we had asked for since October. I'm talking
24 specifically about Housing and Strike Force daily reports,
25 which -- which I know he -- Mr. Quinn had said he wants to

1 redact certain information on those.

2 **THE COURT:** So he needs to produce -- if he wants to
3 redact, he has to provide a privilege log. As soon as you get
4 that privilege log, you can ask for an *in camera* inspection
5 and I'll do it.

6 **MR. CHARNEY:** Okay.

7 **MR. QUINN:** Just so -- I don't believe the Strike
8 Force and Housing Unit reports have been discussed. I might
9 be wrong on this at this conference. I think Darius is
10 referring to something that we have not previously addressed,
11 which is in the letter, but has not been discussed yet. It is
12 not a citizen complaint, it is not anything like that.

13 We have additional objections to those documents.
14 So that might be something -- recognizing the Court might have
15 to go, that might be something that has to be addressed at
16 another time from my perspective.

17 **THE COURT:** Okay. I wasn't talking about it in a
18 particular group. I was talking about what happens with the
19 redactions. You get a redacted document, it needs to be
20 accompanied by a privilege log that complies with the Federal
21 Rules of Civil Procedure. As soon as you get that privilege
22 log, you can ask me to do an *in camera* inspection and I will.

23 **MR. CHARNEY:** All right, Your Honor, and I apologize
24 again -- this is Mr. Charney, just because I know you have to
25 go, but this is the first that we're hearing from Mr. Quinn

1 that he has additional objections to production of those
2 Housing and Strike Force reports. So, I mean, we may need to
3 burden you again very soon with that issue because --

4 **THE COURT:** That's fine. We'll keep on this.

5 You'll find me -- some people say tenacious, my husband says
6 relentless. So don't worry, I will stay on this issue. We're
7 going to come back at least in 90 days, and if we need to come
8 back sooner we will.

9 **MS. WILNER:** And, Your Honor, this is Claudia
10 Wilner. And we had also just requested a general extension of
11 deadlines in the case, and we had made a proposal that was in
12 the first letter, document 22. I'm not aware that defendants
13 had any objections to that proposal, but we wanted to get the
14 reaction of the Court.

15 **THE COURT:** So if you agree on a revised schedule,
16 that's fine. I will sign off on it. If you are in
17 disagreement, you need to file a motion for a revised
18 discovery schedule and I'll see what's proposed and I will
19 pick between the discovery schedules.

20 It probably is not going to work in a case like
21 this to be too informal about things. So in any other case if
22 you wanted to extend the discovery schedule, you would reach
23 out to the other side and see if they consent and present it
24 to the Court by way of stipulation or motion if there's no
25 consent. That's what I want you to do in this case. It's --

1 I couldn't tell if I was being asked to compel production, I
2 was just being advised as to what was going on.

3 So let's -- where a motion would otherwise be
4 filed, let's file a motion, okay?

5 **MR. CHARNEY:** Thank you.

6 **MS. WILNER:** Okay, thank you, Your Honor.

7 **THE COURT:** All right, thank you. Sorry I have to
8 go. We can come back within the 90 day period if we need to.

9 **MR. QUINN:** Thank you, Judge.

10 **THE COURT:** All right.

11 **MS. WILNER:** Thank you.

12 (WHEREUPON, proceedings adjourned at 4:07 p.m.)

13 * * *

14 **CERTIFICATE OF TRANSCRIBER**

15
16 In accordance with 28, U.S.C., 753(b), I certify that
17 this is a true and correct record of proceedings from the
18 official electronic sound recording of the proceedings in the
19 United States District Court for the Western District of New
20 York before the Honorable Christina Clair Reiss on May 30th,
21 2019.

22
23 S/ Christi A. Macri

24 Christi A. Macri, FAPR-CRR
25 Official Court Reporter